PRIVY COUNCIL REPORT

ARUMUGAM PILLAI v. DIRECTOR GENERAL OF INLAND REVENUE

[Privy Council (Lord Fraser of Tulleybelton, Lord Russell of Killowen & Lord Scarman) December 4, 8, 9, 1980 & January 28, 1981]

[Privy Council Appeal No. 31 of 1977]

Revenue Law — Income Tax — Back duty investigation — Additional assessment — Some additional assessments statute-barred unless there was fraud or wilful default — Procedure before Special Commissioners — Onus of proof — Whether taxpayer given opportunity to present his case — Whether rules of natural justice complied with — Income Tax Ordinance, 1947, ss. 69(1) & 76(3) — Income Tax Act, 1967, ss. 3 & 9(3).

This was an appeal from the decision of the Federal Court reported in [1977] 2 M.L.J. 63. The issues raised in this case were —

(1) Whether the procedure followed by the Special Commissioners in arriving at their Deciding Order was correct?

(2) Whether the appellant had the opportunity to present his case, in other words, whether the principles of natural justice had been observed?

At the beginning of the hearing before them the Special Commissioners ruled that (a) the onus of proving fraud or wilful default rested on the Revenue; (b) that the onus of proving that the assessments for the years that were not time barred were excessive or erroneous rested on the appellant taxpayer (c) that he should begin and lead evidence relating to those years.

Held: (1) the appellant in this case was given an opportunity to call evidence in rebuttal and to deal with the matters that arose. The appellant was given a full and adequate hearing and reasonable opportunity to be heard;

(2) in this case there was nothing to show that the rules of natural justice had been broken or that the procedure was in any way improper. There was therefore no ground for interfering with the decision of the Special Commissioners.

PRIVY COUNCIL APPEAL FROM MALAYSIA.

S. Ambalavaner and *R. Mathew* for the appellant.

Stewart Bates Q.C., Nicholas Lyell Q.C. and *Mokhtar Sidin* (Senior Federal Counsel) for the respondent.

Cur. Adv. Vult.

Lord Fraser of Tullybelton (delivering the judgment of the Board): This is an appeal from a Judgment and Order of the Federal Court of Malaysia (Suffian L.P., Ong Hock Sim F.J. and Wan Suleiman F.J.) dismissing an appeal by the appellant from an Order of the High Court of Malaysia (Chang Min Tat J.). The High Court dismissed an appeal against a determination by the Special Commissioners of Income Tax, whereby they had directed assessments to income tax of sums aggregating more than $10 m. to be made on the appellant in respect of 14 years extending over a period of 20 years between 1953 and 1972 inclusive. The assessments in respect of the years 1953, 1957, 1958 and 1959 (the "back years") were statute barred at the date of assessment (1972) and therefore could not be raised by the Revenue unless fraud or wilful default was proved against the appellant taxpayer. The other assessments, in respect of the years 1960, 1961, 1962 and 1966-72 inclusive were not statute barred. The Special Commissioners held that the appellant had committed fraud or wilful default, within the meaning of section 69 of the Income Tax Ordinance 1947, and that the additional assessments for the back years had been validly raised. They held further that the appellant had not shown that the Revenue's computation of his income and tax for any of the 14 years in question was excessive or erroneous.

The fact that some of the assessments were statute barred, while others were not, caused the procedure before the Special Commissioners to be a little more complicated than it would otherwise have been, and this complication lies at the root of the appeal.

A large number of issues have been raised by the appellant at various stages of the appeal, but before the Federal Court, as appears from the judgment of that court, counsel for the appellant "elected to base his appeal entirely on two issues, namely —

(1) whether the procedure followed by the Special Commissioners in arriving at their Deciding Order was correct?

(2) whether the appellant had opportunity to present his case, in other words, whether the principles of natural justice had been observed?"

Before their Lordship's Board counsel for the appellant sought to raise some entirely new issues. He also sought leave to adduce further evidence. Neither of these requests was supported by adequate reasons and their Lordships refused leave to adduce further evidence and, in accordance with their usual practice, they refused to hear argument on issues which had not been raised before the Federal Court. The appeal was therefore limited to the two issues already mentioned. The Federal Court stated in their judgment that they did not find any merit or substance in the argument for the appellant, and their Lordships are in complete agreement with that view.

It is not necessary or appropriate to refer in detail to the facts found by the Special Commissioners or to the procedure followed by them. These matters are fully explained in the Stated Case and have all been considered in the careful judgment of Chang Min Tat J. in the High Court. But as some criticism of the accuracy of the Stated Case was attempted by counsel for the appellant before the Board, their Lordships draw attention to the fact, which is narrated in the judgment of Chang Min Tat J., that the stated case was shown in draft to the appellant's solicitors and that they wrote to the Revenue stating that they had no amendment to make or additions to ask for. In these circumstances their Lordships cannot entertain any criticism of the stated case now.

The essence of the appellant's complaint that the principles of natural justice had not been observed was that the case against him had not been put to him adequately, or in sufficient time to enable him to answer it. Such plausibility as the complaint possesses derives from the course of the procedure before the Special Commissioners. At the beginning of the hearing the Special Commissioners ruled, after hearing argument:

(1) that the onus of proving fraud or wilful default rested on the Revenue;

(2) that the onus of proving that the assessments for the years that were not time barred were ex-

cessive or erroneous rested on the appellant taxpayer;

(3) that he should begin and lead evidence first relating to those years.

The expectation was that when the Revenue led evidence in reply it would at the same time deal with the question of fraud, and, if fraud was established, the appellant would then have an opportunity to show, if he could, that the assessments for the back years were excessive or erroneous. However, the appellant, who gave evidence himself and whose evidence-in-chief occupied five days, dealt with all the matters in issue, including the statute-barred assessments. His cross-examination, which also took five days, also dealt with the assessments for the back years. One of the principal arguments of counsel for the appellant was that the procedure was unfair and contrary to natural justice in respect that the appellant had been confronted during his cross-examination without notice with figures relating to years that were, in some cases, 20 years past, which he could not be expected to remember. He also complained that certain documents had not been put to the appellant in cross-examination but had first been produced when the witness for the Revenue was giving evidence-in-chief, with the result that the appellant had no opportunity of dealing with them.

Their Lordships are of opinion that the complaints are without substance. The answer to all of them is that an opportunity was given to the appellant to call evidence in rebuttal and he elected not to take it. After the evidence for the Revenue had been completed the Special Commissioners ruled on July 22, 1975 that the appellant could lead evidence on any fact on which he had been taken by surprise. On July 31, 1975 the appellant's counsel intimated that the appellant did not intend to lead further evidence. That intimation was given after the appellant had had ample time to consult with his advisers before coming to a decision, including a week's adjournment from July 24 to 31. Their Lordships refer to the passage in the stated case, quoted in full in the judgment of the Federal Court, which explains the course of evidence and concludes with this sentence:—

"However, on July 31, 1975, after the close of the case for the respondent and after the court's ruling on the question of fraud or wilful default, Counsel for Appellant informed us that the Appellant had elected not to call any further evidence in reply to show that the statute-barred years of assessment were excessive or erroneous, nor to give any evidence in rebuttal on any fact in relation to the assessment for the other years."

Having regard to that statement it is in the opinion of their Lordships out of the question for the appellant now to contend that he had no opportunity of dealing with these matters.

The argument on the other issue — namely whether the procedure followed by the Special Commissioners was correct — overlapped the argument in relation to natural justice to a considerable extent, and their Lordships have not been able to detect any substance in it. The Special Commissioners had wide powers to regulate their own procedure, by virtue of Schedule 5 to the Income Tax Act, 1967, and particularly paragraph 22 of that Schedule which provides:—

"22. Subject to this Act and any rules made under section 154(1)(d), the Special Commissioners may regulate the procedure at the hearing of an appeal and their own procedure."

Section 154(1)(d) gave power to the Minister to make rules regulating the practice and procedure in appeals to the Special Commissioners but their Lordships understand that he has not made any such rules. When the appeal was in the High Court, the learned judge said, rightly in the opinion of their Lordships, that the Special Commissioners' power to regulate the procedure at the hearing before them was "subject always to the important consideration that the appellant must be given a full and adequate hearing or reasonable opportunity to be heard". He held, as their Lordships agree, that the appellant has had such an opportunity in this case.

No doubt the hearing before the Special Commissioners imposed a considerable burden on the appellant's memory. That was inevitable in such an extensive investigation involving such large sums and covering such a long period of time, but he had been aware since his books and papers were seized in August 1972 that his affairs were being investigated and he had plenty of time to refresh his memory and prepare his evidence. Their Lordships are unable to see that the rules of natural justice were broken or that the procedure was in any way improper. They agree with the opinion of the Federal Court and the High Court that there is no ground for interfering with the decision of the Special Commissioners.

Their Lordships will advise His Majesty the Yang di-Pertuan Agong that the appeal should be dismissed with costs to the respondent.

Appeal dismissed.

Solicitors: *Coward Chance; Stephenson Harwood.*